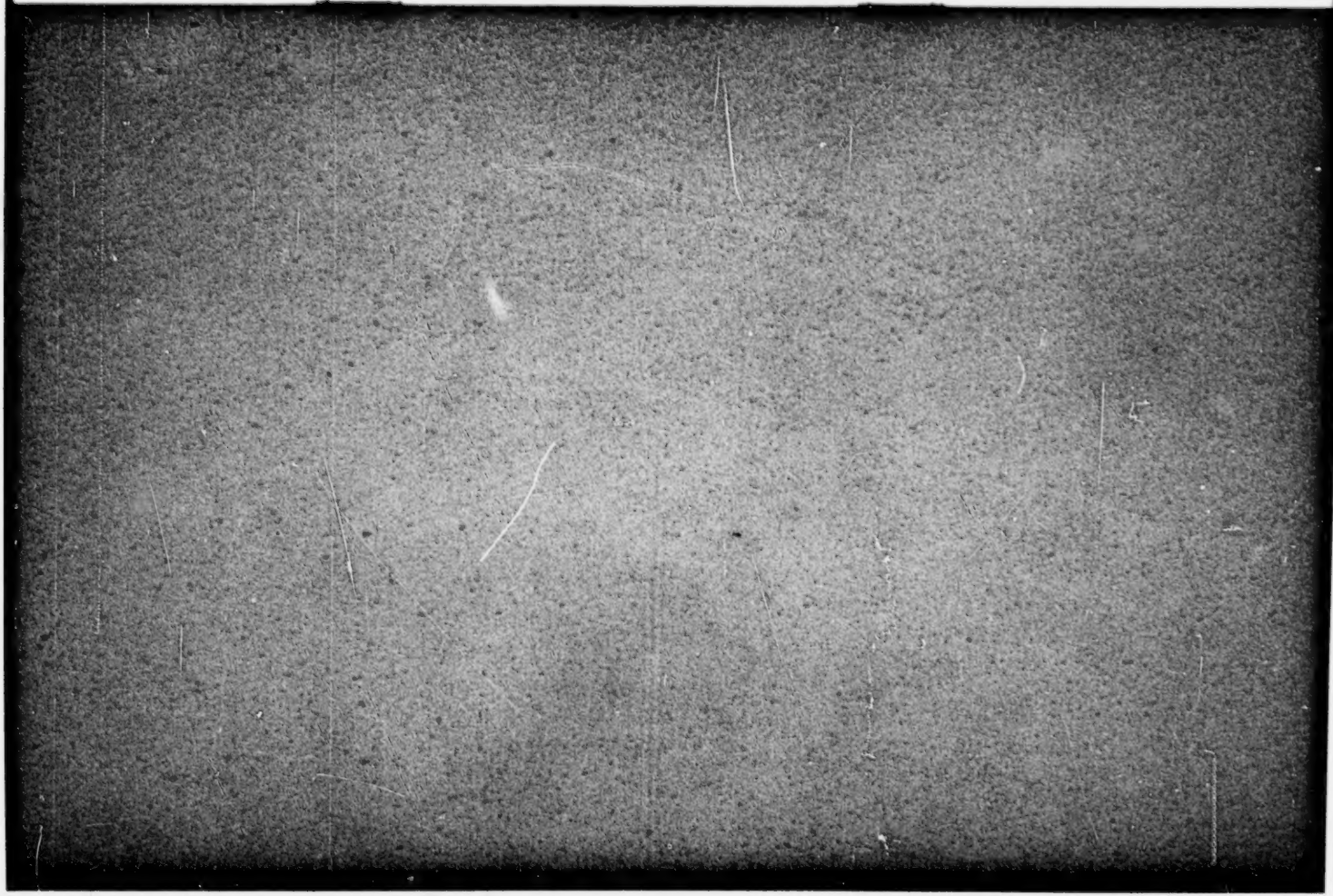


IN THE

# SUPREME COURT OF THE UNITED STATES

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MICHAEL RODAK, JR., CLERK

OCTOBER TERM, 1974

NO. 74-91

CHARLES L. MOULTON and
PAULINE M. MOULTON,

*Petitioners,*

*v.*

FORD MOTOR COMPANY and
HULL-DOBBS,

*Respondents.*

*ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE*

## BRIEF IN OPPOSITION

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# SUPREME COURT OF THE UNITED STATES

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## ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

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## BRIEF IN OPPOSITION

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The matter presented involves no federal question or constitutional issue for this Court. While it is conceded that a revision of a statute of limitations *can* be construed as having retroactive effect without federal constitutional deprivation, there is no constitutional requirement that

such a revision *must* be construed as having retroactive effect in order to avoid a Fourteenth Amendment violation. The decision in *Campbell v. Holt*, 115 U.S. 620 (1885), is an example of this Court holding retroactivity as a permissive but not obligatory legislative intent. Consequently, the decision in *Moulton* carries out the clearly espoused rule of *Campbell* and therefore presents no federal question or constitutional issue for this Court.

Whether or not the common law or statutes of a state permit a recovery of damages by an occupant of an automobile against its manufacturer historically has been a subject exclusively within the discretion of the individual states. Petitioner confuses what he deems *desirable* with a constitutional mandate. Due Process requirements of the Fourteenth Amendment, clearly, do not foreclose the states from adopting laws, interpretations, rules, procedures, limitations and restrictions of uniform application defining the use of the Courts of the fifty states to redress alleged civil wrongs, nor does Due Process preordain, as Petitioner's position dictates, that this Court must now choose one point in time for statutes of limitation to begin to run from the gamut of multiple points now existent throughout the states, i.e. date of sale, date of wrongdoing, date of discovery, date of accident, etc. Traditionally, the states have chosen between the various possibilities without intervention and resolution by this Court. This is the essence of our common law system of torts and adjective law.

It is perhaps significant that while Petitioner asserts a legislative intent issue in his question presented, the remedy he seeks would necessarily require this Court to now upset *Jackson v. General Motors Corp.*, 223 Tenn. 12, 441 S.W.2d 482 (1969), and a long line of earlier Tennessee cases on the sole ground of unconstitutionality of

the law upon which *Jackson* depends. Manifestly, the *Moulton* ruling by the Tennessee Supreme Court is merely a reiteration of its Jackson ruling which, in turn, affirmed the long standing Tennessee statutory construction.

Petitioner cites *Jackson* on page 5, but fails to advise the Court that counsel in *Jackson* sought a writ of certiorari from this Court on the very basis of alleged Fourteenth Amendment violation of Due Process involved herein, and the previous application was denied at 396 U.S. 942 (1969).

Since no good reason for review by this Court has been shown, the petition for certiorari should be denied.

Respectfully submitted,

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August 13, 1974